

1 **RODNEY J. JACOB, ESQ.**
2 **DANIEL M. BENJAMIN, ESQ.**
3 **CALVO & CLARK, LLP**

4 Attorneys at Law
5 655 South Marine Corps Drive, Suite 202
6 Tamuning, Guam 96913
7 Telephone: (671) 646-9355
8 Facsimile: (671) 646-9403

9 Attorneys for Defendants
10 **FUJITSU LIMITED AND**
11 **FUJITSU MICROELECTRONICS AMERICA, INC.**

FILED

DISTRICT COURT OF GUAM

MAR - 5 2007 *mba*

MARY L.M. MORAN
CLERK OF COURT

12 IN THE UNITED STATES DISTRICT COURT

13 DISTRICT OF GUAM

14 **NANYA TECHNOLOGY CORP. and**
15 **NANYA TECHNOLOGY CORP. U.S.A.,**

16 Plaintiffs,

17 vs.

18 **FUJITSU LIMITED, FUJITSU**
19 **MICROELECTRONICS AMERICA, INC.,**

20 Defendants.

CIVIL CASE NO. 06-CV-00025

[Signature]
[PROPOSED] SCHEDULING ORDER

Pursuant to Rule 16 and 26(f) of the Federal Rules of Civil Procedure, and Local Rule 16.1 for the District Court of Guam, the Defendants hereby submit the following Proposed Scheduling Order:

1. The nature of this case is as follows:

In 1999, Fujitsu Limited (a Japanese corporation referred to herein as “Fujitsu”) began discussion with Nanya Technology Corporation (a Taiwanese corporation referred to herein as “Nanya”) with regard to Nanya licensing certain patents from Fujitsu. In 2005, Fujitsu initiated a proceeding in Japan against Nanya alleging patent infringement. Efforts to settle that case have been ongoing in Tokyo District Court.

Nanya filed this action on September 13, 2006 against Fujitsu and its U.S. subsidiary, Fujitsu Microelectronics America, Inc. (“FMA”).

Fujitsu and FMA then brought suit in the Northern District of California against Nanya and its U.S. subsidiary Nanya Technology Corp. USA (“Nanya USA”). The Northern District is the principle place of business for FMA and for Nanya USA.

On November 17, 2006, Nanya amended its complaint to add additional claims and to add Nanya USA as a co-plaintiff.

The complaint has been served on FMA, but service on Fujitsu is disputed.

2. The posture of this case is as follows:

a. The following motions are on file:

Fujitsu filed objections to the Magistrate Judge’s Order that permitted alternative service of the original complaint upon it under Fed. R. Civ. P. 4(f). By Order dated January 25, 2007 Fujitsu’s objections were overruled.

FMA and Fujitsu filed motions to dismiss or transfer to the Northern District of California or for a more definite statement on December 5, 2006 and December 18, 2006, respectively. The Court has set a hearing date for these motions on March 22, 2007.

Nanya has filed two motions to compel responses to the same set of document requests served on FMA on Dec. 14, 2006. The first motion to compel was filed on January 17, 2007 and

1 the second motion to compel was filed on February 9, 2007. FMA filed an opposition to the first
2 motion to compel on February 1, 2007. FMA's response to the second motion to compel is due
3 on February 23, 2007. Nanya also served a motion to clarify an Order from the Magistrate dated
4 December 11, 2006. FMA filed an opposition to this motion on February 1, 2007. Nanya has
5 requested argument on its second motion to compel on March 2, 2007 and Defendants have
6 agreed to this date. Defendants have further asked the Court to schedule argument on the first
7 motion to compel and the motion to clarify the Magistrate's order on this same date. Nanya does
8 not agree that argument is necessary on the first motion to compel and on the motion to clarify the
9 Magistrate's order but, if there is argument, do not object to having the argument on March 2,
10 2007. A hearing date has not been set for this motion.

11 Nanya filed a motion for entry of a protective order on January 30, 2007. Defendants
12 filed an opposition to the motion and requested entry of an alternate protective order. Additional
13 discussions between counsel has resulted in an agreement on the terms of a protective order and
14 the parties expect a stipulated order will be submitted shortly. Thus, this motion may be moot.

15 Nanya filed a motion for leave to serve 900 interrogatories and 900 requests for admission
16 on January 30, 2007. Defendants filed an opposition on February 13, 2007. Defendants have
17 requested that a hearing on this motion also be set for March 2, 2007. Nanya does not agree that
18 argument is necessary on this motion but, if there is argument, does not object to having the
19 argument on March 2, 2007. A hearing date has not been set for this motion.

20 b. The following motions have been resolved: None except Fujitsu's
21 Objections to the Magistrate's Order concerning alternative service as noted above and
22 procedural motions.

23 c. The following discovery has been initiated: Nanya and Nanya USA served
24 FMA with a first request for production of documents on December 14, 2006. These discovery
25 requests are the subject of two motions to compel by Nanya, as noted above. In addition, on
26 January 31, 2007, Plaintiffs provided Defendants with "early" copies of sixteen sets of
27 voluminous merits-based discovery requests, but have not yet formally served those requests. On
28

February 9, 2007, Plaintiffs served sets of discovery requests on Fujitsu and FMA. On February 9, 2007 Defendants were informed that Nanya has served or is attempting to serve third party subpoenas for documents on Hyundai Autonet Pontus America Corp, Nikon Americas, Inc., Epson America, Inc., and Nikon, Inc.

Nanya has requested the depositions of Mr. Shigeru Kitano of Fujitsu and Mr. Michael Moore of FMA. FMA has agreed to produce Mr. Moore in California on February 27, 2007. The parties are trying to work out a date and location for Mr. Kitano's deposition.

Defendants request that merits based discovery be stayed until such time as the Court decides Defendants' motions to dismiss based on, *inter alia*, lack of personal jurisdiction. Plaintiffs oppose this stay.

3. All motions to add parties and claims shall be filed on or before: June 1, 2007.

4. All motions to amend pleadings shall be filed on or before: September ~~2~~⁴, 2007.

5. Status of Discovery. The Discovery Plan attached hereto is adopted and incorporated as part of this Scheduling Order.

6. The parties shall appear before the District Court on February 21, 2007 at 10:00 a.m. for the Scheduling Conference, or at such date and time as the Court shall determine. The parties are working towards a joint stipulation to request that this date be moved to March 2, 2007 at 10:00 a.m.

7. The discovery cut-off date (defined as the last day to file responses to discovery) is: February 1, 2008.

8. The anticipated discovery motions are: None at this time.

a. All discovery motions shall be filed on or before: January 4, 2008.

b. The anticipated dispositive motions are: Motions to dismiss, motions for summary judgment.

All dispositive motions shall be filed on or before: June 27, 2008. Claim construction issues shall be addressed along with any dispositive motions.

9. The prospects of settlement are: The parties have been ordered to participate in mediation in connection with the related California case on or before June 1, 2008. Prospects for settlement are unknown at this time.

10. The Preliminary Pretrial Conference shall be held on or before: December 1, 2008^{at 10:00 A.M. JTS}. This date is submitted for the Court's convenience if presently needed; however, the parties' agreement is that this date will be selected when closer to trial.

11. The parties' pretrial materials, discovery materials, witness lists, designations and exhibits lists shall be filed on or before: December 15, 2008. This date is submitted for the Court's convenience if presently needed; however, the parties' agreement is that this date will be selected when closer to trial.

12. The Proposed Pretrial Order shall be filed on or before: December 15, 2008. This date is submitted for the Court's convenience if presently needed; however, the parties' agreement is that this date will be selected when closer to trial.

13. The Final Pretrial Conference shall be held on or about: December 22, 2008^{at 10:00 A.M. JTS}. This date is submitted for the Court's convenience if presently needed; however, the parties' agreement is that this date will be selected when closer to trial.

14. The trial shall be held on: January 12, 2009^{at 9:00 A.M. JTS}.

15. The Plaintiffs have filed a request for a jury trial on claims that can heard by a jury. The parties anticipate the possibility of motion practice as to which claims can properly be heard by a jury.

16. It is anticipated that it will take 16 days to try this case.

17. The names of counsel on this case are:

Attorneys for Plaintiffs

Joseph C. Razzano, Esq.
TEKER, TORRES & TEKER, P.C.
Suite 2A, 130 Aspinall Avenue
Hagåtña, Guam 96910
Tel: (671) 477-9891
Fax: (671) 472-2601

John S. Unpingco, Esq.
**LAW OFFICES OF JOHN S. UNPINGCO
& ASSOCIATES, LLC**
777 Rte. 4, Suite 12B
Sinajana, Guam 96910
Tel: (671) 475-8545
Fax: (671) 475-8550

Alfonso G. Chan
Martin Pascual
Michael W. Shore
SHORE CHAN BRAGALONE LLP
Suite 4450
325 North Saint Paul Street
Dallas, TX 75201
Tel: 214-593-9110
Fax: 214-593-9111

Kenneth E. Chore
Vance P. Freeman
SHORE WEST FREEMAN, P.C.
Suite 200
2020 Billowens Parkway
Longview, TX 75604
US
Tel: 903-295-7200
Fax: 903-295-7201

Attorneys for Defendants

Rodney J. Jacob
Daniel M. Benjamin.
CALVO & CLARK, LLP
655 S. Marine Corps Drive, Suite 202
Tamuning, Guam 96913
Tel: (671) 646-9355
Fax: (671) 646-9403

Christopher E. Chalsen
Michael M. Murray
Lawrence T. Kass
Frank A. Bruno
Chris L. Holm
MILBANK, TWEED, HADLEY & MCCLOY LLP
1 Chase Manhattan Plaza
New York, New York 10005
Tel: (212) 530-5000

18. The parties have been ordered to participate in mediation in connection with the related California case. The parties will report the results of the mediation to this Court.

19. The parties present the following suggestions for shortening trial: None at this time.

//

//

//

//

//

//

//

//

20. The following issues will also affect the status or management of this case: None at this time.

SO ORDERED this 2nd day of March, 2007.


Joaquin V.E. Manibusan, Jr.

U. S. Magistrate Judge, District Court of Guam

APPROVED AS TO FORM AND CONTENT:

CALVO & CLARK, LLP
Attorneys for Defendants

Date: 2/16/07

By: 

DANIEL M. BENJAMIN

TEKER, TORRES & TEKER, P.C.
Attorneys for Plaintiffs

Dated: 2/16/07

By: 

JOSEPH C. RAZZANO

RECEIVED
FEB 16 2007

DISTRICT COURT OF GUAM
HAGATNA, GUAM